MONTANA LEGISLATIVE HISTORY

Chapter 226 19 75

Bill H _____ S 190 Original bill & history ✓ C

H. Committee on Public Health, Welfare & Safety			S. Committee on Public Health Welfare & Safety		
Hearing Date(s)	Mar 06	✓ C	Hearing Date(s)	Jan 28	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	Mar 06	✓ C		Jan 28	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Senate BILL NO. 190

INTRODUCED BY LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE NON LIABILITY FOR MEMBERS OF PEER REVIEW COMMITTEES AND PROFESSIONAL STANDARDS REVIEW COMMITTEES; RELATING TO CERTAIN MEDICAL PROFESSIONALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Non liability for peer review -- application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or of a utilization committee of a statewide or local society composed of doctors of medicine or doctors of osteopathic medicine and surgery or of a peer review or professional standards review committee of a statewide or local society composed of doctors of medicine, doctors of osteopathic medicine and surgery, doctors of dentistry, chiropractors, doctors of optometry, or registered pharmacists shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him, after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) This act also applies to any member of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

Section 2. Effective date. This act is effective on passage and approval.

-End-

(See Attachment 1). Senate Public Health, Welfare and Safety - January 28

There being no further proponents and no opponents, the meeting was opened to discussion.

Senator Olson asked of Mr. Gudgel what the figures were of transfusions used in long-term facilities. Mr. Gudgel explained he did not have the figures but that only in emergency situations are blood gransfusions given by them.

Senator Stephens pointed out that the long-term facilities had partially been set up to relieve hospitals and physicians. He wanted to know if this had brought about any problem with the hepatitis virus. Mr. Gudgel didn't feel that it had.

Senator Seibel asked if the facilities would be immuned from liability, to which Mr. Gudgel replied that there would still be criminal liability.

There being no further discussion Senator Blaylock made a motion that SB 182 DO PASS. A roll call vote was held with all members voting for the motion.

CONSIDERATION OF SENATE BILL NO. 190: An act to provide non-liability for members of peer review committees and professional standards review committees; relating to certain medical professionals; and providing an immediate effective date.

Senator Neil Lynch, chief sponsor, opened the hearing of the bill by presenting it to the committee and asked the committee if it would amend the bill by deleting on page 2, lines 6 and 7, Section 2 in its entirety and that also in the title, page 1, lines 7 and 8 following "professionals;" delete all of the rest of those two lines.

Senator Lynch explained that his bill would simply provide immunity from liability for those people selected to be on a peer group committee. As Senator Lynch had additional business to attend to he asked if Mr. Jerry Loendorf of the Montana Medical Association, could handle the balance of discussion and close in his stead.

At Senator Norman's request Mr. Loendorf provided a definition of peer review committee as a committe of one's fellow associates, in his profession, who review the services to see if they are needed. The peer review committee may have to tell the practitioner his services were either not needed or were improper. In this case often times, the practitioner, as it now stands, could turn around and sue the peer review committee for libel or slander.

Dr. Penrose Radley, President of the Montana Dental Association made a statement on the goal of peer review committees in the dental profession. He highlighted that the purpose is to make sure treatment is needed and when performed it was satisfactory. He said the following three things are absolutely essential for protection. 1) Carefully planned legal constitution; 2) Adequate insurance and 3)Protection for civil damage suits.
He felt unless persons sitting on the peer review committees are exempt from anything they might say about a practioner they would not want to serve on the committee.

Dr. Lohman, Secretary of the Montana Dental Association, propo pointed out several advantages to having peer review committees. They judge cases of fraud, treatment that is not necessary and treatment not done in a satisfactory manner. Without clauses of immunity 1) they would lose good men who might function well on a committee and 2) Insurance companies do not want to insure them at a reasonable rate. He also said this bill was more or less taken

treatment not done in a satisfactory manner. Without clauses of immunity 1) they would lose good men who might function well on a committee and 2) Insurance companies do not want to insure them at a reasonable rate. He also said this bill was more or less taken from the Ohio Law as well as six or seven others including Indiana

Mr. Al Dougherty, representing the Chiropractic Association also voiced his support of the bill for reasons previously stated.

Rod Gudgel, of the Montana Nursing Home Association, was generally in favor of the bill but requested an amendment wherein on line 13 on p. 1 after the word "hospital" there would be inserted, ",or long-term care facilities".

After general remarks in closing by Mr. Loendorf, the meeting was opened to discussion by Chairman Norman.

Senator Colberg had several questions regarding the impact th decision of the peer review group has on the individual especially in such cases as Medicare and Medicare. Mr. Loendorf said suit ca still be brought against the actual doctor in the case of malpract but this bill would protect only the actual peer group for any of their decisions.

Questions were asked as to how and by what criteria these groups were set up. It was explained that local peer review committees were selected from the staff of hospitals and facilities. The local review committees are responsible to the state committees and they in turn are responsible to the Board of Dentists.

There was also a concern as to the difference between peer review committes and utilization committees. Senator Norman offerred that the utilization committees are concerned with the actual professional competence of a practitioner and if the patient is receiving proper care (over-treatment or under-treatment)

Dr. Lohman also pointed out that utilization committees are under the government constitution where peer review committees are n

Asked by Senator Colberg if there would be an appeal provision, Lohman said that the decision of the local committee is not final. It may be carried to the state peer groups, and on to the Board of Dentists and from there to the law.

Senator Olson pointed out that courts are no longer limited to the geographical area and testimony can be brought in from other states. He also mentioned that since the peer review committe were established among doctors (Actual committees are not as yet set up. They more or less 'police their own ranks') they seem to take more caution in making sure patient's histories are well recorded.

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He gave an example of how the peer group actually operates, i. length of patient's stay for particular malady. The peer group, he said, has no authority to discharge a patient.

Senator Stephens noted that the decision doesn't preclude malpractice cases and likened the peer review committees to the Ethics and Standards Committees of the legal profession.

Senator Seibel asked if this would affect insurance premiums Sen. Norman said no, that there are fixed costs for insurance compan

Senator Blaylock had a doublt that this bill might make the committee too powerful but Senator Norman explained that the people serving on the committee are reviewing fellow professionals who will periodically have the opportunity to review them.

As there was no further discussion, it was moved by Senator Norman that the bill be amended by deleting on page 1, lines 7 and 8 following "professionals;" delete all of the rest of those two lines and on page 2, lines 6 and 7, delete Section 2 in its entirety. A roll call vote was called with all members voting yes.

Senator Blaylock moved to amend the bill on line 13 of p. 1 after the word "hospital" to insert ",long-term care facilities,".

It was moved by Senator Stephens that the title be amended on page 1, line 5 by inserting, "Utilization Review Committees," following the word "Committees".

The two above motions were carried unanimously.

Senator Norman moved the committee adopt the amendments proposed which was voted favorably by all.

Senator Colberg moved that SENATE BILL 190, DO PASS, AS AMENDED. The motioned carried unanimously in the roll call vote.

ADJOURN: There being no further business, the meeting was adjourned at 12:30.

Bill Norman

BILL NORMAN, CHAIRMAN

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

44th LEGISLATIVE SESSION -- 1975

Date

NAME	PRESENT	ABSENT	EXCUSED
NORMAN, Bill, Chairman	X		
SEIBEL, Ann, Vice Chairman	X		
BLAYLOCK, Chet	X		
COLBERG, Richard A.	X	X	
LEE, Robert E.	X		
HIMSL, Matt	X		

HIMSL, Matt	X		
OLSON, S.A.	X		
STEPHENS, Stan	X		

Each day attach to minutes

Date January 28, 1975, Tuesday Bill No. 190 Time 12:15

NAME	YES	NO
SEIBEL, Ann, Vice Chairman	X	
BLAYLOCK, Chet	X	
COLBERG, Richard A.	X	
HIMSL, Matt	X	
LEE, Robert E.	X	
OLSON, S.A.	X	
STEPHENS, Stan	X	
NORMAN, Bill, Chairman	X	

January 28 19 75

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration Senate Bill No. 190

Respectfully report as follows: That Senate Bill No. 190

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introduced bill (white), be amended as follows:

1. Amend title, page 1, line 5.
   Following: "Committees"
   Insert: " , Utilization Review Committee,"

2. Amend title, page 1, line 7 thru line 8.
   Following: "Professionals"
   Strike: "; And Providing An Immediate Effective Date."
   Insert: "."

3. Amend page 1, line 13.
   Following: "hospital"
   Insert ", or long-term care facility,"

4. Amedd page 2, line 6 thru line 7.
   Strike: Section (2) in its entirety

AND AS SO AMENDED, DO PASS

~~DO PASS~~

vm:

STATE PUB. CO.
Helena, Mont.

BILL NORMAN Chairman.

COMMITTEE ON PUBLIC HEALTH, WELFAREAND SAFETY BILL NO. 182,

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO.
Richard Larson	Mt. Hospital Assn	190
[illegible]	Mt. Hospital Assn	190
Connie Radley	Mt. Dental Assoc	190
[illegible]	Mt Dental Assn	190
Rod Judgel	Mt Nursing Home Assn	182
Rod Judgel	" " " "	190
Al Dougherty	Mont. Chiropractic Assn	190

Gould, excused.

House Comm on Public Health 3/6/75

The following bills were heard in this order: SB 182
SB 190
SB 52
SB 53

SB 182--SPONSOR: Senator Bob Lee, district 43, said this bill would provide immunity to long-term care facilities when furnishin blood product transfusion services. He said that this was already granted to doctors. Proponent Rod Gudgel, Montana Nursing Home Association, said this was enacted two sessions ago, but failed to include long-term care facilities in the drafting (Exhibit I).

SB 190--SPONSOR: Senator Neil Lynch, district 42, said that this wa the "peer-review" bill, allowing this review group to study the medical practice of doctors to determine if they comply with certain professional ethics, granting the peer group immunity from liability on their decisions. In many cases they hesitate to render any decision for fear of liability. Proponent Jerry Loendorf, MMA, said this bill was requested by the Montana Dental Association (MDA), and is drafted from the Ohio law, setting standards for peer-review. Proponent Dr. Penrose Radley, MDA, said this bill would determine if the service was performed in satisfactory quality, and comma respect from the public. This peer-review would set procedu assure adequate insurance, and set certain statutory exempti for professional duties. Rod Gudgel, Montana Nursing Home Association,said this Association and the Montana Pharmaceut Association both supported the bill. He suggested an amendm to page 1, line 13, inserting "long-term care".

at age 18, and the bill would be taking away a constitutional right. Roger Tippy, Staff Attorney for the committee, followed up by saying he did not see any ambiguity, as it states "for all purposes". Murphy asked why the Attorney General's opinion was not requested, and Theissen said that he conferred with the Legislative Advisory Council. Neil Lynch said that the state has the right to enact any laws to protect the health of the state to their best interest. Rep. Harper stated that Alaska has the highest suicide rate, and Montana has the second He asked if age is not a qualification for an alcoholic. Palmer replied that if a person has that certain blood component, he will always have it. Holmes suggested that since the problem is revolving around the high school, this law should only apply to high schools. Neil Lynch said they may be discriminating against the 18-year-old in college. Babcock said that the Constitution should respond to the needs of the people, and that law enforcement should be more stringent so that if a person is selling to a younger person, they are penalized.

There being no further testimony, the committee went into executive discussion.

SB 182--REP. LYNCH MOVED DO PASS. Seconded by Herlevi. MOTION CARRIED UNANIMOUSLY. (Fagg not present for vote. Gould voted Aye -- absentee.)

SB 190--REP. LYNCH MOVED DO PASS. Seconded by Finley. MOTION CARRIED UNANIMOUSLY. (Fagg not present for vote. Gould voted Aye-- absentee.)

SB 52--Murphy asked that the Attorney General's opinion be requested to determine if this was constitutional or not. Rasmussen

NAME Dr. Terrence A. Radley Bill No. SB 190

ADDRESS Helena, Mont Date 3-6-75

WHOM DO YOU REPRESENT? Mont Dental Assoc.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME G. Brian Zins Bill No. SB-190

ADDRESS 3021-11 Ave, Helena Date 3-6-15

WHOM DO YOU REPRESENT? Montana Medical Association

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Irene T Loendorf Bill No. SB 1

ADDRESS Kelly Date 3-6-

WHOM DO YOU REPRESENT? AFT Medicaid Assn

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE BILL NO. 190

INTRODUCED BY LYNCH

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REFERENCE BILL